

Message Text

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ACTION SNM-05

INFO OCT-01 EUR-12 IO-14 ISO-00 L-03 PPTE-00 CA-01
DEAE-00 /036 W

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R 311051Z AUG 78
FM AMEMBASSY MADRID
TO SECSTATE WASHDC 5927
INFO USMISSION GENEVA

UNCLAS SECTION 01 OF 02 MADRID 10006

E.O. 11652: N/A
TAGS: SNAR, SP
SUBJECT: NARCOTICS LAWS

REF: STATE 170187; MADRID 9344

1. THE BASIC LEGAL PROVISION OF SPANISH PENAL CODE WITH REGARD TO NARCOTICS IS ARTICLE 344 WHICH READS: "THOSE WHO ILLEGALLY CARRY OUT ACTS OF CULTIVATION, FABRICATION, ELABORATION, TRANSPORT, POSSESSION, SALE, DONATION OR TRAFFIC IN GENERAL OF TOXIC DRUGS OR STUPEFACIENTS OR IN OTHER WAYS PROMOTE, FAVOR OR FACILITATE THEIR USE, SHALL BE PUNISHED WITH PENALTIES OF MAJOR IMPRISONMENT AND FINE OF 10,000 TO 50,000 PESETAS."

2. IN PRACTICE IN SPAIN THE RESULTS OF APPLICATION OF THE ABOVE AND RELATED NARCOTICS LAWS ARE AS FOLLOWS (KEYED TO QUESTIONS IN STATE 170187):

(1) POSSESSION:

A. POSSESSION OF ANY NARCOTIC OR TOXIC DRUG IS FORBIDDEN EXCEPT UNDER A DOCTOR'S PRESCRIPTION OR GOVERNMENT PERMIT. MARIJUANA, COCAINE, HEROIN, AMPHETAMINES AND BARBITURATES FALL UNDER THE SAME CLASSIFICATION, UNCLASSIFIED

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AND THE LAW MAKES NO DISTINCTION AS TO PENALTIES;

B. THERE ARE NO QUALIFYING AMOUNTS INCLUDED IN THE LAW;

C. PENALTY FOR POSSESSION FALLS UNDER MAJOR CRIMES AND CAN BE PUNISHED BY IMPRISONMENT FROM SIX YEARS AND ONE DAY UP TO 12 YEARS. THE JUDGE PRESIDING OVER

THE CASE CAN IMPOSE A LESSER PRISON TERM;

(2) TRAFFICKING:

A. LAW CONSOLIDATES ALL CONTROLLED SUBSTANCES INTO A
GENERAL TRAFFICKING OFFENSE;

B. PENALTIES ARE THE SAME AS THOSE FOR POSSESSION AND NO
MANDATORY SENTENCING REQUIREMENTS EXIST; NO BAIL
OR PAROLE PROVISIONS ARE SPECIFIED IN THE LAW;
IN PRACTICE THE JUDGE CAN RELEASE A PRISONER ON
BAIL OR PAROLE;

C. MERE SALE OR GIVING THE SUBSTANCE (ANY AMOUNT) TO
SOMEONE ELSE CAN CONSTITUTE TRAFFICKING;

D. THERE ARE PROVISIONS FOR THE OFFENSE OF CONSPIRACY
TO TRAFFIC, IMPORT OR EXPORT A NARCOTIC SUBSTANCE.

(3) CULTIVATION, PRODUCTION, ELABORATION:

A. ALL PROHIBITED BY LAW;

B. THERE ARE LIMITATIONS ON THE PRODUCTION, SALE AND
DISTRIBUTION OF ALL CONTROLLED SUBSTANCES;

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C. ELABORATING NARCOTICS SUBSTANCES FALLS UNDER THE
SAME OFFENSE AS POSSESSION.

(4) FINANCIAL:

A. THIS WOULD BE AN OFFENSE UNDER A CONSPIRACY CASE;

B. THERE ARE STRONG CURRENCY CONTROL LAWS ON EXPORT
OF CURRENCY, FOREIGN BANK ACCOUNTS, ETC. THESE LAWS
ARE BEING ENFORCED WITH AN INCREASING DEGREE OF
STRICTNESS.

(5) CRIMINAL PROCEDURES:

A. FOR A MAXIMUM PERIOD OF 72 HOURS AFTER ARREST, THE
DEFENDANT DOES NOT HAVE TO BE ALLOWED TO
COMMUNICATE WITH ANYONE, INCLUDING CONSULAR OFFICERS.
AFTER THE ARRESTING OFFICERS HAVE COLLECTED ALL THE
EVIDENCE, THE DEFENDANT IS TAKEN BEFORE A JUDGE
WHO WILL THEN INTERROGATE THE DEFENDANT. ONCE A
PERSON IS ARRESTED AND BROUGHT BEFORE THE JUDGE,
ONLY THE JUDGE CAN ORDER HIS RELEASE,

B. PRE-TRIAL DETENTION CAN BE A MINIMUM OF SEVERAL MONTHS;

C. TRIAL PROCESS CAN LAST ONE TO SEVERAL DAYS, APPELLATE REVIEW CAN TAKE SEVERAL MONTHS BEFORE CASE IS HEARD;

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D. LEGAL COUNSEL IS AVAILABLE AT NO COST IF DEFENDANT CAN SHOW HE HAS NO ASSETS;

E. LAW MAKES NO PROVISIONS FOR PAROLE: PAROLE IS LEFT UP TO INDIVIDUAL JUDGE;

F. FOREIGN OFFENDERS ARE NORMALLY EXPELLED AFTER SERVING PRISON TERMS OR IF MINOR OFFENSE, CAN BE EXPELLED BY IMMIGRATION AUTHORITIES.

3. IF DEPARTMENT DESIRES GREATER DETAIL ON ANY OF ABOVE POINTS REQUEST THAT WE BE INFORMED. IF DESIRED COPIES OF SPANISH LAWS AND REGULATIONS CAN BE FORWARDED.
FODMAN

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